

4864.

APPROVAL, BONDS OF JACKSON RURAL SCHOOL DISTRICT,  
MAHONING COUNTY, OHIO, \$20,000.00 (UNLIMITED).

COLUMBUS, OHIO, November 5, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

4865.

CRIMINAL LAW—JURISDICTION OF JUVENILE COURT  
OVER DELINQUENT CHILD—BOARD OF PAROLE UN-  
AUTHORIZED TO RELEASE DELINQUENT CHILD.

*SYLLABUS:*

1. *A juvenile court having found that a male child over sixteen years of age was delinquent, such child, having been made a ward of the juvenile court, remains such until attaining the age of twenty-one years and the jurisdiction of said juvenile court over said male delinquent continues until such time, even though the male delinquent has been committed by the juvenile court to the Ohio State Reformatory.*

2. *The Board of Parole has no jurisdiction to release on parole or otherwise a male delinquent who has been committed to the Ohio State Reformatory by a juvenile court. Such a delinquent male child can be released from the Ohio State Reformatory by the committing juvenile court any time prior to the delinquent child reaching the age of twenty-one years.*

COLUMBUS, OHIO, November 5, 1935.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare,*  
*Columbus, Ohio.*

DEAR MADAM:—This will acknowledge your letter which reads:

“In Section 1652 G. C. of the juvenile court law, it is provided that

“\* \* \* Where it appears at the hearing of a male delinquent child that he is sixteen years of age, or over, and has committed a felony, the juvenile court may commit such child to the Ohio State Reformatory. \* \* \*”

Section 1659 G. C. also establishes the jurisdiction of the juvenile court in the case of a minor under eighteen years of age arrested on any complaint whether for a felony or a misdemeanor.

Over two hundred male prisoners between the ages of sixteen and twenty-one are now confined in the Ohio State Reformatory at Mansfield, having been accused of the commission of felonies but committed as juvenile delinquents by the juvenile courts.

The question has arisen as to the officer or agency having jurisdiction in the parole or release of such prisoners.

Section 2211-4 G. C. provides that

'All powers and duties vested in or imposed by law upon any other officers, boards or commissions of the state, excepting the governor, with respect to recommendation, grant, or order of pardon, commutation of sentence, parole, reprieve, reimprisonment, or release of persons confined in or under sentence to any of the penal and reformatory institutions of the state excepting the boys' industrial school and the girls' industrial school are hereby transferred to, vested in and imposed upon the board of parole and shall be exercised in accordance with the provisions of this act. \* \* \*

Query:

Does the Ohio Board of Parole have authority in the parole or release of minors confined in the Ohio State Reformatory upon juvenile court commitment? If not, how may such prisoners be paroled or released?

Has the juvenile court in commitments to the Ohio State Reformatory authority to fix a minimum and/or maximum term of imprisonment? (In most cases the mittimus reads '1 to age' or 'Until 21')

If the Board of Parole has jurisdiction in the release of juvenile court commitments from the Ohio State Reformatory, when does a prisoner confined under such a commitment become eligible to parole? When may he be given his final release?"

Section 1642, General Code, reads:

"Such juvenile courts, or in counties where there are no juvenile courts, such courts of common pleas, probate courts, insolvency courts and superior courts within the provisions of this chapter shall have jurisdiction over and with respect to delinquent, neglected and dependent minors, under the age of eighteen years,

not inmates of a state institution, or any institution incorporated under the laws of the state for the care and correction of delinquent, neglected and dependent children, and their parents, guardians, or any person, persons, corporation or agent of a corporation, responsible for, or guilty of causing, encouraging, aiding, abetting or contributing toward the delinquency, neglect or dependency of such minor, and such courts shall have jurisdiction to hear and determine any charge or prosecution against any person, persons, corporations, or their agents, for the commission of any misdemeanor involving the care, protection, education or comfort of any such minor under the age of eighteen years."

Section 1643, General Code, provides in part as follows:

"When a child under the age of eighteen years comes into the custody of the court under the provisions of this chapter, such child shall continue for all necessary purposes of discipline and protection, a ward of the court, until he or she attain the age of twenty-one years. The power of the court over such child shall continue until the child attains such age. Provided, in case such child is committed to the permanent care and guardianship of the Ohio board of administration, or the board of state charities, or of an institution or association, certified by the board of state charities, with permission and power to place such child in a foster home, with the probability of adoption, such jurisdiction shall cease at the time of commitment."

The term "delinquent child" is defined in section 1644, General Code, as follows:

"For the purpose of this chapter, the words 'Delinquent child' includes any child under eighteen years of age who violates a law of this state, or a city or village ordinance, or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons; or who is growing up in idleness or crime; or who knowingly visits or enters a house of ill repute; or who knowingly patronizes or visits a policy shop or place where any gambling device or gambling scheme is, or shall be, operated or conducted; or who patronizes or visits a saloon or dram shop where intoxicating liquors are sold; or who patronizes or visits a public pool or billiard room or bucket shop; or who wanders about the streets in the night time; or who wanders about railroad yards or tracks, or jumps or catches on to a moving train, traction or street car, or enters a car or engine with-

out lawful authority, or who uses vile, obscene, vulgar, profane or indecent language; or who is guilty of immoral conduct; or who uses cigarettes, cigarette wrapper or substitute for either, or cigars, or tobacco; or who visits or frequents any theatre, gallery, penny arcade or moving picture show where lewd, vulgar or indecent pictures, exhibitions or performances are displayed, exhibited or given, or who is an habitual truant; or who uses any injurious or narcotic drug. A child committing any of the acts herein mentioned shall be deemed a juvenile delinquent person and be proceeded against in the manner hereinafter provided."

Section 1652, General Code, provides in part as follows:

"In case of a delinquent child \* \* \* the judge may commit such child, if a boy, to a training school for boys, or, if a girl, to an industrial school for girls, or commit the child to any institution within the county that may care for delinquent children, or be provided by a city or county suitable for the care of such children. In no case shall a child, committed to such institutions, be confined under such commitment after attaining the age of twenty-one years; \* \* \* Where it appears at the hearing of a male delinquent child, that he is 16 years of age, or over, and has committed a felony, the juvenile court may commit such child to the Ohio State Reformatory."

Section 1659, General Code, reads:

"When a minor under the age of eighteen years is arrested on and under any charge, complaint, affidavit, or indictment, whether for a felony or a misdemeanor, such child shall be taken directly before the juvenile judge; if the child is taken before a justice of the peace, judge of the police or municipal court or court of common pleas other than a juvenile court, it shall be the duty of such justice of the peace or such judge of the police or municipal court or court of common pleas to transfer the case to the juvenile judge exercising the jurisdiction herein provided. The officers having such child in charge shall take it before such juvenile judge, who shall proceed to hear and dispose of the case in the same manner as if the child had been brought before the juvenile judge in the first instance. Upon such transfer or taking of child before such juvenile judge, all further proceedings upon or under the charge, complaint, information or indictment shall be discontinued in the court of said justice of the peace, police or municipal judge or judge of the court

of common pleas other than a juvenile court, and the case against or relating to such child shall then thenceforth be within the exclusive jurisdiction of such juvenile judge and shall be deemed to be upon a complaint filed in such juvenile court as fully as if the appearance of such child had been upon a complaint filed in and a citation or warrant of arrest originally issued out of and by such juvenile court."

From a reading of the Juvenile Act (sections 1639 to 1683-1, inclusive, General Code), especially the sections quoted herein, it is evident that it was the intention of the legislature to establish a tribunal which would be able to deal with delinquent neglected or dependent children in a humanitarian manner and that the proceedings commenced in the juvenile court against a juvenile offender are primarily for the purpose of reformation. See *State vs. Reed*, 218 N. W., 609 (Ia.); *State vs. Malone*, 100 So., 788 (La.); and *Mattingly vs. Commonwealth*, 188 S. W., 370, p. 371 (Ky.). A proceeding in the juvenile court against a juvenile offender is not of a criminal nature, even though the delinquency is due to a violation of the law. In other words, in a delinquency proceeding in a juvenile court the juvenile offender is not tried for the misdemeanor or felony that he committed but is tried as a delinquent for having committed a misdemeanor or felony. Sections 1648-1, 1649, 1650, 1652 and 1659, General Code. See also *Opinions of the Attorney General for 1932*, pages 107 and 108.

In the case of *Leonard vs. Licker*, 3 O. App., 377, at page 380, it is stated that:

"It has been held by the supreme court of the state of Ohio with reference to the constitutionality of certain sections providing for the commitment of children now known in the statutes as delinquent children, that 'It is neither a criminal prosecution, nor a proceeding according to course of the common law, in which the right to a trial by jury is guaranteed. The proceeding is purely statutory; and the commitment, in cases like the present, is not designed as a punishment for crime, but to place minors of the description, and for the causes specified in the statute, under the guardianship of the public authorities named, for proper care and discipline, until they are reformed, or arrive at the age of majority. The institution to which they are committed is a school, not a prison; nor is the character of their detention affected by the fact that it is also a place where juvenile convicts may be sent, who would otherwise be condemned to confinement in the common jail or the penitentiary.'"

Under the Juvenile Act, a juvenile court has exclusive jurisdiction of all minors under eighteen years of age who commit misdemeanors or felonies, and under section 1659, General Code, such offender cannot be tried by any court other than the juvenile court except in those instances where the juvenile court orders the offender to appear before a court of common pleas as provided in section 1681, General Code.

It is a well established rule of law in this country that a delinquency proceeding is a civil and not a criminal proceeding (*Bryant vs. Brown*, 118 So., 184 (Miss.); *State vs. School*, 167 N. W., 831 (Wis.); *Klopner vs. State*, 189 S. W., 268 (Tex.); and *State vs. Coble*, 107 S. E., 132 (N. C.)), and that delinquency is not a crime (*Ex parte Januszewski*, 196 Fed., 123; and *State vs. Joiner*, 20 O. N. P. (N. S.), 313). That delinquency has not been declared a crime in Ohio is evident from the second paragraph of the syllabus of the case of *Ex parte Januszewski*, supra, which reads in part:

“The purpose of the Juvenile Act (Gen. Code Ohio, secs. 1639-1683), regulating the treatment and control of delinquent children, giving juvenile courts jurisdiction over delinquent children, defining a delinquent child as any child under 17 years of age who violates a law of the state, and providing for proceedings by affidavit and for commitment of delinquent children to the industrial school, the object of which is the reformation of its inmates as declared by sections 2083 and 2094, is to save children under the age of 17 years from conviction of crimes, and under it the state acts as a guardian of delinquent children, and the act is but an administrative police regulation, \* \* \*.”

To the same effect is the following in the case of *State vs. Joiner*, supra, at page 316:

“Delinquency has not been declared a crime in Ohio, and the Ohio juvenile act is neither criminal nor penal in its nature, but is an administrative police regulation of a corrective character; and while the commission of the crime may set the machinery of the juvenile court in motion the accused was not tried in that court for his crime but for incorrigibility.”

Also at pages 318 and 319:

“When a child under eighteen years of age has been by the juvenile court found to be a delinquent child as defined by the juvenile court act, and the juvenile court further finds that said delinquency is grounded in a felony, the delinquent child is dealt

with on account of being found to be a delinquent child and is not punished under our criminal laws for the felony out of which the delinquency sprang unless the juvenile judge in the exercise of his discretion binds the defendant child over to the common pleas court as provided by Section 1681 of this act."

See also *Opinions of the Attorney General*, 1918, page 840.

Under the provisions of section 1652, General Code, a minor child over sixteen years of age, declared by a juvenile court to be a delinquent child because of the commission of a felony, may be committed by the juvenile court to the Ohio State Reformatory. Such a commitment is for the purpose of reformation and the male delinquent child so committed is not deemed to be a criminal since the Ohio State Reformatory, in addition to being a place of detention for criminals between the ages of sixteen and thirty, is also a reformatory school for juvenile delinquents who may be committed to the Ohio State Reformatory by a juvenile court under section 1652, General Code.

In the case of *Leonard vs. Licker*, supra, it was held that a male delinquent over sixteen years of age could be committed to the Ohio State Reformatory. The syllabus reads:

"1. The provisions of the General Code relating to delinquent children are reformatory in their nature and not penal; thence the provisions of Section 1652, General Code, that 'where it appears upon the hearing that such delinquent child is sixteen years of age, or over, and has committed a felony' he may be committed to the Ohio state reformatory, is not unconstitutional.

2. Section 1681, General Code, is discretionary and not mandatory, and a delinquent child, charged with a felony, may be committed as provided in Section 1652, or recognized to the court of common pleas, subject to the requirements of the general criminal laws of the state, at the discretion of the juvenile judge."

The court at page 381 said:

"The Ohio state reformatory is a prison for persons who are convicted of felonies and committed thereto upon a sentence of the court following such conviction; *but for delinquent children who may be committed thereto after having committed an act constituting a felony it is only a school or place of reformation. It is what its name imports, a reformatory.* The case just cited sustains the position of the court in this regard.

We think further that the supreme court has affirmed its

view of the law relating to such matters in the case of *The Cincinnati House of Refuge vs. Ryan*, 37 Ohio St., 197. In that case it was said by Judge Johnson, page 203: "The commitment is not designed as a punishment for crime, but to place destitute, neglected and homeless children, and those who are in danger of growing up as idle and vicious members of society, under the guardianship of the public authorities, for their proper care, and to prevent crime and pauperism. As to such infants, it is a home and a school, not a prison." This more clearly defines the nature of institutions of this kind.

We think that the distinctions drawn in each of these two cases relate equally well to the case at bar, that the *Ohio state reformatory is not intended exclusively as a place of confinement for criminals, and that upon the passage of proper statutes for that purpose it may be made a place of confinement for juvenile delinquents who may be in need of reformation, as seems to have been true in the case at bar.*" (Italics the writer's).

Whenever a juvenile court finds that a child is delinquent, such child becomes a ward of the juvenile court and by virtue of the provisions of section 1643, General Code, remains such until attaining the age of twenty-one years. The jurisdiction of a juvenile court over a delinquent child is exclusive and continues until the child becomes of age, except in those instances where, by the nature of the commitment, the juvenile court by statute is divested of its continuing jurisdiction over a delinquent child. Thus, in a commitment of a delinquent male child by a juvenile court to the Boys' Industrial School, the legislature has provided in section 2084-2, General Code, that:

"When a child has been received by the boys' industrial school under the provisions of this or other chapters on commitment, by a juvenile court, or by transfer or assignment by the board, sole control of said child shall be in the school and the power and jurisdiction of the court shall cease."

In respect to the commitment of a delinquent female child by a juvenile court to the Girls' Industrial School, the legislature has provided in sections 2103 and 2112, General Code, that:

Section 2103.

"With such subordinate officers as the chief matron shall appoint, the chief matron shall have the general charge and custody of the girls. She shall be a constant resident at the school, and under



the direction of the Ohio board of administration, shall discipline, govern, instruct, employ, and use her best endeavors to reform the girls in such manner as, while preserving their health, and promoting the proper development of their physical system, will secure, as far as possible, the formation of moral and industrial habits, and regular thorough progress and improvement in their studies, trades and employments."

Section 2112.

"A girl, duly committed to the school shall be kept there, disciplined, instructed, employed and governed under the direction of the board, until she is either thought to be reformed or discharged, or bound out by the chief matron according to the by-laws of the institution, or has attained the age of twenty-one years. Provided that the board may discharge a girl as a reward of merit three months before she attains the age of twenty-one years. With the approval of the governor, after a full statement of the cause, the board may discharge and return to the parents, guardian, or juvenile court of the county from which she was committed, who may place her under the care of the infirmary superintendent of the county, any girl whom the board thinks ought to be removed from the school. In such case it shall enter upon its record the reason for her discharge, a copy of which, signed by the secretary, shall be forthwith transmitted to the juvenile court of the county from which the girl was committed."

The Supreme Court of Ohio in the case of *State, ex rel. Heth, vs. Moloney*, 126 O. S., 527, held in the second and fourth paragraphs of the syllabus that:

"2. When such a warrant has been issued by a juvenile court, and a minor has been arrested under such warrant, upon a complaint charging him or her with being a delinquent child, the juvenile court has exclusive jurisdiction over such minor."

"4. Under Section 1643, General Code, when a child under the age of eighteen years comes into the custody of the juvenile court by virtue of a warrant and arrest, such child continues for all necessary purposes of discipline and protection a ward of the court until he or she attains the age of twenty-one years, and this is true even though such court has not adjudicated such complaint prior to the time that the minor becomes eighteen years of age."

The proviso in section 1643, General Code, which reads:

“Provided, in case such child is committed to the permanent care and guardianship of the Ohio board of administration, or the board of state charities, or of an institution or association, certified by the board of state charities, with permission and power to place such child in a foster home, with the probability of adoption, such jurisdiction shall cease at the time of commitment.”

does not tend to divest a juvenile court of its jurisdiction over a male delinquent child who has been committed to the Ohio State Reformatory even though that institution comes under the supervision of the Department of Public Welfare, the successor of the Ohio Board of Administration and the Board of State Charities, since the commitment to the reformatory is not made for the purpose of placing the delinquent child in a foster home for adoption nor is such a delinquent child committed to the permanent care of the Department of Public Welfare. Likewise, there is no provision in the statutes (sections 2129 to 2140, inclusive, and 2145, General Code) relating to the Ohio State Reformatory which deprives the juvenile court of its jurisdiction over a male delinquent committed to the Ohio State Reformatory. Those statutes relate primarily to prisoners committed to the Ohio State Reformatory for criminal offenses and clearly indicate that the legislature did not intend that male delinquents committed by a juvenile court were to come within the scope of those statutes.

The legislature has expressly provided for the parole and release of delinquent children from either the Boys' Industrial School or the Girls' Industrial School by the heads of those institutions or the Department of Public Welfare. See sections 2090, 2091, 2092, 2112, 2112-1 and 2112-2, General Code. The fact that the legislature has failed to enact similar parole legislation in respect to a male delinquent child committed by a juvenile court to the Ohio State Reformatory, clearly indicates that the release of such a male delinquent child is to rest within the discretion of the juvenile court unless such power has been expressly conferred upon the Board of Parole by law.

It is evident from what has been said that a male delinquent over sixteen years of age who is committed to the Ohio State Reformatory by a juvenile court is not a prisoner in the sense that that word is ordinarily used in statutes dealing with persons sentenced to the Ohio State Reformatory for criminal offenses. Whether the Board of Parole has jurisdiction to release a male delinquent committed by a juvenile court to the reformatory, depends upon the provisions contained in the act creating the Board of Parole (section 2211 to 2211-9, General Code, 114 O. L., 589).

Section 2211-4, General Code, reads in part:

“All powers and duties vested in or imposed by law upon any other officers, boards or commissions of the state, excepting the

governor with respect to recommendation, grant, or order of pardon, commutation of sentence, parole, reprieve, reimprisonment, or release of persons confined in or under sentence to any of the penal and reformatory institutions of the state excepting the boys' industrial school and girls' industrial school are hereby transferred to, vested in and imposed upon the board of parole and shall be exercised in accordance with the provisions of this act."

Section 2211-5, General Code, provides in part:

"The board of parole shall have the power to exercise its functions and duties in relation to parole, release, pardon, commutation, or reprieve upon its own initiative or the initiative of the superintendent of a penal or reformatory institution."

Section 2211-6, General Code, reads:

"Subject to the limitations imposed by law, the board of parole shall have full, continuous and exclusive power to determine the time when, the period for which and the terms and conditions in accordance with which any prisoner now or hereafter confined in a penal or reformatory institution may be allowed to go upon parole outside the premises of the institution to which he has been committed, assigned or transferred. All prisoners on parole shall remain in the legal custody of the department of public welfare. The concurrence of at least three members of the board at a meeting of the board shall be necessary for the parole or release of a prisoner. When a paroled prisoner shall have performed all the terms and conditions of his parole the board may finally release him."

It is obvious from a reading of sections 2211-4, 2211-5 and 2211-6, General Code, that the Board of Parole is empowered to parole and release from confinement only those persons who have been committed to penal institutions for violations of the criminal laws of the State of Ohio. In section 2211-4, General Code, the legislature has expressly provided that the Board of Parole shall act with reference to "persons confined in or under sentence to any of the penal and reformatory institutions". That proviso itself clearly indicates that the Board of Parole is not clothed with power to release on parole or otherwise a minor committed to the reformatory as a delinquent child. In other words, the Board of Parole was created primarily to deal with criminals incarcerated in the penal institutions of this state and not with delinquent children who by law have been made wards of a distinct governmental agency, to wit, the juvenile court.

It is therefore my opinion that:

1. A juvenile court having found that a male child over sixteen years of age was delinquent, such child, having been made a ward of the juvenile court, remains such until attaining the age of twenty-one years and the jurisdiction of said juvenile court over said male delinquent continues until such time, even though the male delinquent has been committed by the juvenile court to the Ohio State Reformatory.

2. The Board of Parole has no jurisdiction to release on parole or otherwise a male delinquent who has been committed to the Ohio State Reformatory by a juvenile court. Such a delinquent male child can be released from the Ohio State Reformatory by the committing juvenile court any time prior to the delinquent child reaching the age of twenty-one years.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4866.

SANDUSKY BAY BRIDGE—PUBLIC UTILITIES COMMISSION  
MAY FIX TOLL RATES.

*SYLLABUS:*

*The Public Utilities Commission of Ohio has the authority to fix and determine reasonable rates of toll for transit over the Sandusky-Bay Bridge, subject only to the powers conferred upon the Secretary of War.*

COLUMBUS, OHIO, November 6, 1935.

*The Public Utilities Commission of Ohio, State Office Building, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows:

“Under date of October 22, 1935, Hon. Al Kalb, Port Clinton, Ohio, directed a communication to me which reads as follows:

‘Will you please advise whether in your opinion the jurisdiction of your commission extends to the approval or disapproval of toll charges for transportation over the Sandusky Bay Bridge?’

I believe that Section 5416 of the General Code has been amended so as to describe this toll bridge as a public